



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 23, 1994

Charles E. Nemir, P.E.
Executive Director
Texas State Board of Registration
for Professional Engineers
P.O. Drawer 18329
Austin, Texas 78760-8329

OR94-478

Dear Mr. Nemir:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25606.

The Texas State Board of Registration for Professional Engineers (the "board") has received a request for information reflecting the character and reputation of a particular applicant for registration as a professional engineer. The requestor is the attorney for the applicant. You contend that section 552.101 of the Government Code, which incorporates section 26 of the Texas Engineering Practice Act, V.T.C.S. article 3271a, requires the board to withhold the information.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You cite V.T.C.S. article 3271a, section 26 as a statute that deems the requested information confidential. Section 26 of V.T.C.S. article 3271a provides as follows:

A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the Board relating to an applicant for registration under this Act is privileged and confidential and may be used only by the Board or employees or agents of the Board who are directly involved in the application or registration process. The information is not subject to discovery, subpoena, or other disclosure.

Section 26 does not authorize the board to withhold the names of the persons providing references. On the other hand, section 26 expressly designates as confidential "[a] statement made by a person providing a reference for an applicant." Moreover, section 26 does not grant to the applicant or a representative of the applicant a special right of access to this information. *Cf.* Gov't Code § 82.003(c) (entitling applicant to Board of Law Examiners to examine records relating to applicant's own moral character and fitness unless person who supplied information has requested nondisclosure); Open Records Decision No. 623 (1994) (considering Government Code section 82.003).

We note that, with the exception of the name of one person, the board already has released to the requestor the names of persons providing references. The board must release to the requestor that name. However, the board may not release to the requestor the statements of any of the persons providing references for the applicant. Furthermore, the board's notes of a conversation with a person who provided a reference, an internal memorandum summarizing the references, and other notes in the file constitute "pertinent information compiled by . . . the Board relating to an applicant for registration," and the board may not release them to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/LRD/rho

Ref.: ID# 25606

Enclosures: Submitted documents

cc: Mr. Leonard H. Dougal
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(w/o enclosures)